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Swoap v. Superior Court: Old Age Security and "Relative Responsibility" Laws

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SWOAP v. SUPERIOR COURT: OLD AGE SECURITY AND "RELATIVE RESPONSIBILITY" LAWS

The question of the extent to which relatives of persons receiving public aid may be required to reimburse the state for a portion of the cost of such aid has been at issue in many cases in California in the past decade. The subject of this comment is the recent decision by the California Supreme Court in *Swoap v. Superior Court*[1] which announces a major shift in the court's approach to this issue.

This case was first brought before the Superior Court of Sacramento as a class action. Plaintiffs Howard Huntley and Julius Dykstra sought to enjoin the state welfare agency from requiring that adult children reimburse the state pursuant to California Welfare and Institution Code § 12100 and 12101[2] (hereinafter, §§ 12100 and 12101) for funds extended to their parents through the state Old Age Security program.

Plaintiffs maintained that §§ 12100 and 12101 and the corresponding California Civil Code § 206[3] (hereinafter, § 206) impose upon them a liability that is violative of their right to equal protection of the laws guaranteed by the 14th amendment. This matter originally arose when the plaintiffs were ordered by their respective county welfare departments to reimburse the state for part of the money which had been given in aid to their parents. Plaintiff Huntley, who had a monthly income of $656.25, was instructed to pay the department $70 per month for the support of his 88-year-old mother. Plaintiff Dykstra was ordered to pay $75 per month to the state for aid received by his 78-year-old mother. These amounts were computed from the relative's contribution scale of § 12101. In

1. Swoap v. Superior Court, 10 Cal. 3d 490, 516 P.2d 840, 111 Cal. Rptr. 136 (1974) (4-2 decision, Tobriner and Mosk, JJ., dissenting).

2. CAL. WEL. AND INST. CODE § 12100 (West 1972) reads:

> If an adult child living within this state fails to contribute to the support of his parent as required by Section 12101, the county granting aid under this chapter may proceed against such child.

§ 12101 provides for a determination of the relative's ability to contribute and lists a contribution scale based on the relative's income.

3. CAL. CIV. CODE § 206, as approved March 21, 1872, read:

> It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability.

its decision the California Supreme Court overturned a temporary restraining order issued by the lower court which enjoined the state from collection and upheld the constitutionality of § 12100 and 12101.

1

Underlying § 206 is the theory that certain family relationships create an automatic duty of support; and that because the state has assumed this familial duty by providing such support, the relatives may be required to repay the state. Sections 12100 *et. seq.*, known as the "relative responsibility" laws, determine whether and to what extent an individual may be required to reimburse the state for benefits a relative has received under the Old Age Security program.

The idea of "relative responsibility" arose with the development of the British Elizabethan Poor Laws. This series of acts constituted a comprehensive system of laws which authorized the grant of public aid but at the same time subjected the recipients to extensive government control and special rules. The central concept of the Poor Law system was the public provision for the care and support of the poor. As Professor Jacobus tenBroek has observed, however, the relative responsibility theory is one of the earliest devices developed by the government to minimize and regulate its fiscal expenditures when assuming public responsibility for relieving the distress of poverty.[4] Modern state governments have found, moreover, that relative responsibility laws offer a means of reducing expenditures in a manner less politically objectionable than reducing the size of grants or eliminating assistance programs.

When California adopted the first state pension plan in the nation in 1929,[5] it included a provision that the state could refuse to grant a pension if the applicant had legally responsible relatives able to care for him or her. Initially, California designated brothers, sisters, grandparents and grandchildren, as well as spouse, parent and child responsible for an old person's welfare. This was changed in 1931 reducing the categories to spouse, parent and child. This increased the number of people eligible for pensions. In 1937 the Hornblower Act[6] made it possible for an applicant to receive an old-

4. *See* J. PUTNAM, OLD AGE POLITICS IN CALIFORNIA, FROM RICHARDSON TO REAGAN 10 (1970); tenBroek, *California's Dual System of Family Law* (pt. 3) 17 STAN. L. REV. 614 (1964).
5. Stats. 1929, ch. 530.
6. Stats. 1937, ch. 405, § 2(f).

age pension even if there were responsible relatives with the ability to support him or her, provided the applicant could prove that these relatives did not actually make any contribution.[7]

The plaintiffs in *Swoap* alleged that these statutes violated equal protection of the laws by arbitrarily selecting a class of persons to pay a larger portion than the rest of the public of the cost of a program which the state had chosen to initiate.

The resolution of this Supreme Court question is best understood in the context of previous decisions in the field of relative responsibility over the past 10 years. In 1964, in *Department of Mental Hygiene v. Kirchner*[8] suit was brought challenging an action by the Department of Mental Hygiene by which the state sought to recover under California Welfare and Institution Code § 6651[9] the cost of defendant's mother's mental care at Agnews State Hospital. This statute was held unconstitutional because it lacked a rational basis for classifying the persons to be charged under it. The court in *Kirchner* stated that the state might seek reimbursement for the costs of a public program from a relative of a benefited person only if there were a rational basis for it, for instance, if the relative would have been legally responsible for providing such a service even if the state had not chosen to render it. No such legal responsibility could be found here. Any attempt to arbitrarily charge one class of society without first establishing this duty would be violative of equal protection. This seminal decision made a pre-existing legal duty a Constitutional prerequisite to mandatory state reimbursement by a class of individuals who do not directly receive the benefit of the program. A similar action, *In re Dudley*,[10] was brought challenging the constitutionality of Welfare and Institution Code § 5260.[11] Here, the Court of Appeals held that parents must pay for expenses after they have voluntarily placed their adult child in a state

7. R. NELSON, RELATIVE RESPONSIBILITY AND REIMBURSEMENT IN OLD AGE ASSISTANCE 5 (1960).

8. Dep't of Mental Hygiene v. Kirchner, 60 Cal. 2d 716, 388 P.2d 720, 36 Cal. Rptr. 488 (1964).

9. CAL. WEL. AND INST. CODE § 6650 (West 1972) reads:
> The husband, wife, father, mother, or children of a mentally ill person or inebriate . . . shall be liable for his care, support, and maintenance in a state institution of which he is an inmate.

10. *In re* Dudley, 239 Cal. App. 2d 401, 48 Cal. Rptr. 790 (1966).

11. CAL. WEL. AND INST. CODE § 5260 (West 1972) reads:
> The court shall inquire into the financial condition of the parent, guardian, or other person charged with the support of any person committed, and if it finds him able to do so, in whole or in part, it shall make a further order, requiring him to pay . . . to the county, at stated periods, such sums as the court deems proper during such time as the person remains in the institution. . . .

mental institution. A pre-existing duty of support by the parents of an adult child was determined to exist in the provisions of § 206.[12] The court found that a parent is obligated to care for and maintain an adult child who is incapable of supporting him or herself.

Similarly, the California Supreme Court, in *In Re Rickey H.*,[13] responding to a challenge to the constitutionality of Welfare and Institution Code § 903.1[14] found that a parent's support obligation does not end with the furnishing of necessities to a minor child and that the minor is entitled to support consonant with his or her parents' financial ability and position in society. Thus the parents were required to reimburse the state for the services of an attorney appointed by the court to represent their child in juvenile court.

Until *Swoap*, the most recent California Supreme Court decision regarding the constitutionality of California's relative responsibility statutes has been *County of San Mateo v. Boss*.[15] The decision itself, but more importantly, the legislative reaction to it, influenced the instant decision. In *Boss*, San Mateo brought an action against the adult son of a recipient of aid under § 12100 *et seq.* in order to recover $20 per month which he had refused to pay as partial reimbursement of the $116.90 per month in aid payments received by his mother. She was unable to work and her only other income was $64.00 per month from Social Security; she lived in her own home, however, valued at $32,000. The son had no other dependents and was earning about $800 per month. On the basis of these facts the trial court entered judgment for the county. The supreme court reversed. Using the test outlined in *Kirchner* the court in *Boss* reiterated the requirement of an independent, pre-existing legal duty of support in order to meet the requirement of rationality. Since, following *Kirchner*,[16] there is no common law duty of support, this duty with respect to the provisions of the § 12100 *et seq.* could only be established by reference to § 206.

The court stated that defendant's mother because she owned a valuable home did not qualify as a "poor person" under § 206.

12. CAL. CIV. CODE § 206, as approved March 21, 1872.
13. *In re* Ricky H., 2 Cal. 3d 513, 468 P.2d 204, 86 Cal. Rptr. 76 (1970).
14. CAL. WEL. AND INST. CODE § 903.1 (West 1972):
> The father, mother, spouse, or other person liable for the support of a minor person . . . shall be liable for the cost to the county of legal services rendered to the minor by the public defender pursuant to the order of the juvenile court.

15. County of San Mateo v. Boss, 3 Cal. 3d 962, 479 P.2d 654, 92 Cal. Rptr. 294 (1971).
16. 60 Cal. 2d at 718, 388 P.2d at 721, 36 Cal. Rptr. at 489.

It further stated that a person may be "in need," and thus eligible to receive aid to the aged and yet not be "a poor person who is unable to maintain himself by work" for purposes of § 206. Absent a pre-existing legal duty of support arising from § 206, there could be no rational basis for charging defendant with his mother's support under § 12100 *et seq.* The court added that the imposition of liability pursuant to §§ 12100 and 12101 was not in all instances a denial of equal protection, but did not express an opinion as to whether the duty of support created by § 206 provides, in and of itself, a sufficient basis for rational classification of those who are required to pay a larger portion of the expense of providing welfare assistance.[17]

Within six months, the California legislature, apparently reacting to the decision in *Boss*, passed the Welfare Reform Act, which amended § 206 by changing the words "poor person" to "person in need" and adding the line: "A person who is receiving aid to the aged shall be deemed a person in need. . ."[18] This amendment effectively foreclosed any further attempt by the court to examine the financial condition of the recipient in determining whether there existed an independent duty of support. It imposed a duty to support upon the adult child of any recipient of old age benefits.

II

After hearing the *Swoap* plaintiff's contention that § 206 as amended does not create a pre-existing duty of support within the meaning of *Kirchner*, the court opted to resolve the broader question of whether the ideological foundation of § 206 itself provided a rational basis for the classification of responsible relatives. They concluded that it does.[19] The court declined, however, to base reimbursement by the state under § 12100 *et seq.* on a subrogation by the state of an individual duty created by § 206, and in so doing expressly overruled their recent decision in *Boss*. The court cited the opinion in *County of San Bernardino v. Simmons*,[20] an action brought against an adult daughter pursuant to former Welfare and Institution Code § 2224[21] from which present § 12100 is derived to recover a part of the county aid paid to her father. The *Simmons*

17. *Id.* at 971, 479 P.2d at 659, 92 Cal. Rptr. at 300.
18. CAL. CIV. CODE § 206 (West 1972) *as amended by* ch. 578, P. 1137, § 3, urgency, eff. Aug. 13, 1971, Stats. of Calif. (1971).
19. 10 Cal. 3d at 500, 516 P.2d at 846, 111 Cal. Rptr. at 300.
20. County of San Bernardino v. Simmons, 46 Cal. 2d 394, 296 P.2d 329 (1956).
21. CAL. WEL. AND INST. CODE § 2224 (West 1954).

decision stated that the authority of counties to be reimbursed by responsible relatives of persons who received aid to the aged was entirely independent of and not derived from § 206. Quoting extensively from that opinion, the court in *Swoap* reaffirmed its former holding and declared that § 12100 and 12101 are completely independent of § 206 and that the county's right to reimbursement, as well as the original liability of the child are created solely by § 12100 *et seq.*[22] The court then turned to the real question raised by *Kirchner* and critical to the decision in this case: whether the class of adult children in general are under some duty, apart from § 206, which provides a rational basis for upholding the provisions of §§ 12100 and 12101 against the charge that they are violative of equal protection of the laws. Plaintiffs contended that relative responsibility under § 12100 should be subject to the "strict scrutiny" test as delineated by the California Supreme Court in *Serrano v. Priest.*[23] Plaintiffs did not contend that these statutes affect any "fundamental interest," but argued that they create suspect classifications because they (1) distinguish between people on the basis of wealth, and (2) distinguish between people on the basis of ancestry. The court rejected the first theory on the ground that the statutes apply to all adult children of needy parents without making distinctions between rich and poor. To the additional charge that these children were discriminated against on the basis of their parents wealth the court replied that the class of parents in need is the only class in which the state has an interest or to which it owes a duty. Moreover, because the state is acting properly in aiding these parents, the correlative liability it imposes on their children is without discrimination on the basis of wealth.[24]

As to the second theory, that of classification by ancestry, the plaintiffs cited language from *Hirabayashi v. U.S.*: "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality."[25] The court in *Swoap*, however, interpreted this passage as referring only to racial classification and not parentage in the general sense.

Having determined that these statutes did not create any suspect classifications, the court proceeded to apply the test of constitutional-

22. 46 Cal. 2d at 398, 296 P.2d at 331.
23. Serrano v. Priest, 5 Cal. 3d 584, 597, 487 P.2d 1241, 1250, 96 Cal. Rptr. 601, 610 (1971).
24. 10 Cal. 3d at 504, 516 P.2d at 849, 111 Cal. Rptr. at 145 (1974).
25. Hirabayashi v. United States, 320 U.S. 81, 100 (1943).

ity for a non-suspect classification as defined in *Serrano* "requiring merely that distinctions drawn by a challenged statute bear some rational relationship to a conceivable legitimate state purpose."[26] Finding that relieving the state of part of the cost of providing for the aged is a legitimate statutory purpose, the court found a rational relationship between this purpose and the imposition of liability for reimbursement on adult children of recipients of such aid. It based this finding on the fact that these children had received special benefits from the so-called class of "parents in need", benefits which make a future obligation reasonable.[27] Justices Tobriner and Mosk joined in a strongly worded and lengthy dissent in which they objected that the majority had established a "new constitutional standard for determining when the state may compel some of its citizens to pay for benefits which the state in its wisdom decides to provide to other citizens."[28] No longer would the court allow, as they did in *Boss*, the financial status of the recipient to be weighed. Furthermore, they viewed this decision as irreconcilable with *Kirchner*, and those cases following its reasoning, which require the presence of an independent, pre-existing legal duty of support before the state can seek reimbursement.

Challenging the majority's constitutional acceptance of the new amendments to § 206 as providing an "independent" duty, Justice Tobriner pointed out that these amendments[29] were enacted simply as a means of implementing the state's reimbursement program; the constitutionality of that program itself was in question. He further added that if the state can create a "legal duty" merely by amending a statute, the whole purpose and spirit of the duty requirement, that of avoiding arbitrary classification, is defeated. Justice Tobriner stated:

> Given the history and purpose of section 206, it cannot be said that adult children would have been legally obligated to support their needy parents absent the state's decision to provide such aid. Accordingly, section 206 does not establish a preexisting, independent duty of support constitutionally sufficient to justify the challenged relative responsibility provisions.
>
> Furthermore, even if section 206 could be

26. 5 Cal. 3d at 597, 487 P.2d at 1250, 96 Cal. Rptr. at 610.
27. 10 Cal. 3d at 506, 516 P.2d at 851, 111 Cal. Rptr. at 147.
28. *Id.* at 511, 516 P.2d at 854, 111 Cal. Rptr. at 150.
29. CAL. CIV. CODE § 206 (West 1972) as amended by ch. 578, P. 1137, § 3, urgency, eff. Aug. 13, 1971, Stats. of Calif. (1971).

> said to create an independent duty on adult children under our prior decisions, I still believe the challenged provisions are invalid as an invidious discrimination against the children of poor parents.[30]

III

As pointed out by the dissenting Justices, the decision could enable a government intent on reducing the general tax burden to single out insulated minority classes to bear a disproportionate share of the tax burden of a whole range of public services. Besides charging adult children with a share of the costs of old age benefits, the state may now be empowered to charge such children for any and all kinds of benefits which it decides to confer upon its aged citizens.

In recent years, California's government has become acutely budget-conscious and money spent for public assistance has come under special scrutiny.[31] The controversy and pressure to achieve a financial saving has increased as government spending in all areas has increased. In such an economy-minded atmosphere, it does not seem unlikely that the state government may try to find other services for which some responsible relatives could be charged. Not only can this be applied to adult children of parents receiving pensions but the state may also use this power to demand reimbursement from parents whose children are taking special classes in school, participating in recreation programs or utilizing lower public transportation rates. In such a case, the state would merely have to demonstrate a rational relationship between purpose of the program and the group to be charged with its cost. The most immediate ramification of this decision will most likely be an increased use of the relative responsibility provisions as applied to the Old Age Security program and mental hospital care—the two areas that have received the most attention in the past. Though the relative responsibility laws are primarily designed and used for the purpose of saving state funds, there is some disagreement whether this aim is in fact achieved. The administrative costs are high since the state must locate such relatives, determine their income and then force them to pay their required share to the state.[32]

30. 10 Cal. 3d at 522, 516 P.2d at 861, 111 Cal. Rptr. at 157.
31. R. NELSON, *supra* note 7.
32. *Id.*

It is frequently argued that the relative responsibility laws save state funds by reducing the total number of recipients. Proponents of these laws contend that many people are unwilling to apply for benefits since their families may be liable to the state for any money received. However, statistics on this question are contradictory and neither confirm nor refute this argument.

In a survey taken in 1954, two out of three Welfare Agency directors stated that the relative responsibility laws of the state cost more to administer than they actually return.[33] In contrast, a survey taken of caseworkers in 1960 revealed that they believed that the Old Age Assistance caseload would be 13.5% greater if the relative responsibility requirement were lifted.[34]

In 1949, California experimented with removing its relative responsibility clause from the statutes. It experienced a dramatic 27% increase in caseload.[35] However, not all of this increase should be attributed to relative responsibility because the 1949 changes also included removing some property restrictions and lowering the eligibility age from 65 to 63. For whatever reasons, the amount paid by the state to Old Age Security recipients also increased sharply during this period. From 1948 to 1950 this amount rose from $123 million to $225 million, an increase of $102 million.[36] In no other two-year period since 1945 has there been such a sharp increase.[37]

Although it may be true that the relative responsibility provisions will eventually save the state some money, and that the court's decision in *Swoap* will serve to generate more income for the state's treasury, it is also true that there are, or should be, other considerations involved besides minimizing costs. The public welfare program was created for the public good. The statutes were not enacted to serve only the particular interests of the beneficiary groups which are to be served by these programs. As Professor tenBroek has stated:

> The principle cause of dependency is not individual but social, a need for protection arising

33. F. BOND, OUR NEEDY AGED 316 (1954); Tully, *Family Resopnsibility Laws*, 5 FAMILY L.Q. 32, 34 (1971).
34. R. NELSON, *supra* note 7, at 51.
35. *Id.*
36. CALIFORNIA DEP'T OF SOCIAL WELFARE, PUBLIC WELFARE IN CALIFORNIA, Series AR 1-15, Appendix 1 (1973).
37. Since 1971, the total amount paid to Old Age Security recipients has been decreasing. For 1971 the total was $427,143,641; for 1972 the total was $409,132,022; and for 1973 the total was $390,573,682.

> from the complexities of modern society and the imperfections of a rapidly advancing economy. Since a major cause of poverty is social, over which the individual has no control, relief is a proper charge against the whole economy.[38]

From a sociological viewpoint, increased enforcement of relative responsibility frequently serves to destroy whatever family unity may have existed. Families often are forced to bring the recipients into their homes because they cannot afford to give the required money outright. When relatives are forced to live together by necessity rather than by choice, there is apt to be an increase in emotional tension replete with feelings of guilt and resentment.[39] Even when families do provide the required support in cash, there are still likely to be feelings of resentment on the part of the children and guilt on the part of the parent. A recent survey of applicants for Old Age Security disclosed that

> [f]ew of them wished to trade their status as parent for that of aged child to their own adult children. Neither do they wish to jeopardize an affectional relationship by encumbering it with financial obligations which might transform it into just another duty for their sons and daughters.[40]

By removing the judicial protection provided by the decisions in *Boss* and *Kirchner*, the court has, in effect, abandoned one group of society—adult children of parents receiving aid under the Old Age Security Law. At the same time, many of the inequities which make the relative responsibility laws so objectionable, on other than constitutional grounds, have been preserved. Although the legislative classification of responsible relatives may appear reasonable for any single welfare program, comparing the ambit of relative responsibility from one program to another discloses ambiguities. For example, in 1961 the Legislature entirely abolished relative responsibility for the blind and disabled programs.[41] It appears that the rationale behind this change is that a relative is not responsible for one of his kin becoming blind, but he is responsible for his growing old. Also, California only applies its relative responsibility legislation to resi-

38. tenBroek, *supra* note 4, at 642.
39. J. PUTNAM, *supra* note 4, at 27.
40. TISSUE, PATTERNS OF AGING ON WELFARE 38 (1972).
41. Rosenbaum, *Are Family Responsibility Laws Constitutional?* 1 FAMILY L.Q. (issue #4) 55, 74 (1967).

dent relatives.[42] Thus it is only the relative residing in the same state as the recipient who gets charged with his support. In a way, this practice tends to penalize adult children who live near their parents, while rewarding those who move to other states.

These contradictions serve to illustrate the plight of the individuals who will be effected by the *Swoap* decision. For the most part, they are a relatively powerless group of individuals. It can be expected that the relative responsibility laws generally touch only lower income families. The children and other relatives of the poor are most likely to be poor themselves. It has been said that the relative responsibility laws are actually economically unsound because they "perpetuate impoverishment" by frustrating the possibility of children's saving for their own old age.[43] In this manner, a chain of impoverishment is created from one generation to another, and the court's decision in *Swoap* can only serve to strengthen the links of that chain.

Despite the majority's constitutional imprimatur upon the present application of the relative responsibility laws in California, the words of Justice Tobriner's dissent may present a more accurate picture of what has really occurred:

> The majority have uprooted cases in the subsoil of our law. The tragedy lies in the fact that those cases were the product of the courts' sensitive accommodation of constitutional principle to social reality. Thus the majority have turned back the pages of judicial history and restored the inequitable requirement that some of the poor support others of the poor; the majority defend again the arbitrary selection of a private group to bear a public burden; the majority disregard the constitutional injunction against the denial of the equal protection of the laws.[44]

Finally, apart from the social consequences of this decision so aptly described by the dissenting justices, the jurisprudential consequences are at least as startling! The majority expressly stated that adult children are under no common law duty to support their parents. They also decline to rely upon any statutory duty of support. Rather, the majority has found a basis for law which overrides the

42. R. NELSON, *supra* note 7, at 38.
43. Tully, *supra* note 33, at 41-42.
44. 10 Cal. 3d at 525, 516 P.2d at 884, 111 Cal. Rptr. at 160.

14th amendment—"societal customs."[45] Might the majority take the same approach to racial segregation, an equally long standing societal custom? Clearly not; however, in the area of welfare law this decision marks a return to the mentality which inspired the very societal customs which modern constitutional law has sought to minimize.

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45. *Id.* at 503, 516 P.2d at 849, 111 Cal. Rptr. at 145.